FILED

96 799 NOV 14 1996

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

KELSEY-HAYES COMPANY,

Petitioner,

v.

RICHARD P. HELWIG, RICHARD L. BAYLESS, AUGUST L. BOETSCH, DONALD L. BARBER, JOSEPH F. SORNA and LOUIS H. KAYSER, on behalf of themselves and all others similarly situated,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

JULIA A. MARTIN
Counsel of Record
MATKOV, SALZMAN, MADOFF & GUNN
55 East Monroe Street, Suite 2900
Chicago, Illinois 60603
(312) 332-0777

Attorneys for Petitioner

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

79 pp

QUESTIONS PRESENTED

1. Do this Court's decisions in *Curtiss-Wright Corp. v. Schoonejongen* and *Firestone Tire and Rubber Co. v. Bruch* permit ERISA § 502(a)(1)(B) enforcement of "vested" rights to welfare benefits, when the "written instrument" constituting the benefits plan contains no affirmative provision of vesting, but rather expressly allows the employer to terminate the benefits?

2. Does ERISA § 102(b) require disclosure in the summary plan description ("SPD") of the employer's statutory right to amend the welfare benefits plan, as "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits?"

3. Does § 502(a)(1)(B) permit enforcement of an SPD's purported benefit vesting language, when the welfare plan itself does not waive the statutory right to amend the plan *and* the SPD expressly provides that the plan controls in cases of conflict?

4. If the answer to No. 3 is "yes," do ERISA and federal common law require Plaintiff participants and beneficiaries to prove as an element of their claim that they relied upon the SPD's vesting provisions to their detriment?

PARTIES BELOW

Petitioner Kelsey-Hayes Company is a Defendant in the District Court, and was the Appellant in the Court of Appeals. Kelsey-Hayes Company is a wholly-owned subsidiary of K-H Corp., which in turn is wholly-owned by LucasVarity plc, a publicly-traded entity. Petitioner has no non-wholly-owned subsidiary.

Hayes Wheels International, Inc. was named a Defendant after the District Court issued its decision and before the Court of Appeals ruled. It was not an Appellant before the Sixth Circuit and is not a Petitioner here. Hayes Wheels is a publicly-traded company.

Respondents Richard P. Helwig, Richard L. Bayless, August L. Boetsch, Donald L. Barber, Joseph F. Sorna and Louis H. Kayser are Plaintiffs in the District Court, were Appellees in the Court of Appeals, and proceed on behalf of themselves and a class of persons similarly situated.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
PARTIES BELOW	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	11
I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRIOR PRONOUNCEMENTS	12
II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE FOURTH AND FIFTH CIRCUITS	16
III. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE THIRD CIRCUIT	17
IV. THE DECISION BELOW CONFLICTS WITH DECISIONS OF SIX OTHER CIRCUITS	20
CONCLUSION	23
APPENDIX	1a

TABLE OF AUTHORITIES

Cases	PAGE
Aiken v. Policy Management Sys. Corp., 13 F.3d 138 (4th Cir. 1993)	20
Andersen v. Chrysler Corp., 1996 U.S. App. LEXIS 28496 (7th Cir. Nov. 1, 1996)	20, 21
Anderson v. Alpha Portland Indus., Inc., 836 F.2d 1512 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989)	21
Bachelder v. Communications Satellite Corp., 837 F.2d 519 (1st Cir. 1988)	21
Branch v. G. Bernd Co., 955 F.2d 1574 (11th Cir. 1992)	20
Chiles v. Ceridian Corp., 95 F.3d 1505 (10th Cir. 1996)	20
Curtiss-Wright Corp. v. Schoonejongen, 115 S. Ct. 1223 (1995)	*passim*
Deibler v. UFCW Local 23, 973 F.2d 206 (3d Cir. 1992)	13
Edwards v. State Farm Mut. Auto. Ins. Co., 851 F.2d 134 (6th Cir. 1988)	9
Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101 (1989)	11, 15
Fuller v. CBT Corp., 905 F.2d 1055 (7th Cir. 1990)	18
Gable v. Sweetheart Cup Co., 35 F.3d 851 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 1442 (1995)	13, 14, 16, 22
Gill v. Moco Thermal Indus., Inc., 981 F.2d 858 (6th Cir. 1992)	14

Gillis v. Hoechst Celanese Corp., 4 F.3d 1137 (3rd Cir. 1993), *cert. denied*, 114 S. Ct. 1396 (1994) . 19

Glocker v. W.R. Grace & Co., 974 F.2d 540 (4th Cir. 1992) 19

Govoni v. Bricklayers, Masons & Plasterers Int'l Union Local No. 5 Pension Fund, 732 F.2d 250 (1st Cir. 1984) 21

Gridley v. Cleveland Pneumatic Co., 924 F.2d 1310 (3rd Cir.), *cert. denied*, 501 U.S. 1232 (1991) 15, 18, 21

Hansen v. Continental Ins. Co., 940 F.2d 971 (5th Cir. 1991) 18, 20

Heidgerd v. Olin Corp., 906 F.2d 903 (2nd Cir. 1990) 18, 20

Hermann v. Cencom Cable Assoc., Inc., 978 F.2d 978 (7th Cir. 1992) 18

International Union, UAW v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) 9

Jensen v. SIPCO, Inc., 38 F.3d 945 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1428 (1995) 17

Massachusetts v. Morash, 490 U.S. 107 (1989) ... 12

McGee v. Equicor-Equitable HCA Corp., 953 F.2d 1192 (10th Cir. 1992) 19

McKnight v. Southern Life & Health Ins. Co., 758 F.2d 1566 (11th Cir. 1985) 18

Musto v. American Gen. Corp., 861 F.2d 897 (6th Cir. 1988), *cert. denied*, 490 U.S. 1020 (1989) .. 14

Pierce v. Security Trust Life Ins. Co., 979 F.2d 23 (4th Cir. 1992) 19, 20

Senkier v. Hartford Life & Accident Ins. Co., 948 F.2d 1050 (7th Cir. 1991) 18

Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983) . 12

Sprague v. General Motors Corp., 92 F.3d 1425 (6th Cir.), *reh'g en banc granted and vacated*, 1996 WL ____ (6th Cir. Nov. 7, 1996) 9, 14

Sturges v. Hy-Vee Employee Benefit Plan and Trust, 991 F.2d 479 (8th Cir. 1993) 19

Whiteman v. Graphic Communications Int'l Union Supp. Retirement and Disability Fund, 871 F. Supp. 465 (D.D.C. 1994) 18

Wise v. El Paso Natural Gas Co., 986 F.2d 929 (5th Cir.), *cert. denied*, 105 U.S. 870 (1993) 13, 15, 16, 17

Statutes

Employee Retirement Income Security Act of 1974

§ 3(1), (2), 29 U.S.C. § 1002(1), (2) 1, 2, 12

§ 3(3), 29 U.S.C. § 1002(3) 2, 18

§ 102(b), 29 U.S.C. § 1022(b) 3, 15, 16, 17

§ 104(b)(1), 29 U.S.C. § 1024(b)(1) 21

§ 402(a)(1), 29 U.S.C. § 1102(a)(1) 3, 13

§ 404(a), 29 U.S.C. § 1104(a) 4

§ 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) ..... *passim*

§ 502(a)(2), (a)(3), 29 U.S.C. § 1132(a)(2), (a)(3) 4

Regulations

29 C.F.R. § 2520.102-3 ..... 15, 17

Kelsey-Hayes Company ("Kelsey-Hayes") here petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, filed on August 20, 1996, upholding a preliminary injunction against Kelsey-Hayes entered by the United States District Court.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 93 F.3d 243 (6th Cir. 1996), and is reproduced at pages 1a - 16a of the Appendix to this certiorari petition (hereafter "Pet. App."). The District Court Order granting the Plaintiffs' motion for preliminary injunction is reported at 857 F. Supp. 1168 (E.D. Mich. 1994), and is reproduced at Pet. App. 17a - 46a. An unreported District Court Order from which appeal also had been taken is reproduced at Pet. App. 47a - 48a.

JURISDICTIONAL STATEMENT

The Sixth Circuit's opinion was entered on August 20, 1996. (Pet. App. 1a). No petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1)

STATUTORY PROVISIONS INVOLVED

ERISA § 3, 29 U.S.C. § 1002, provides in relevant part:

> (1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organ-

ization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

* * * *

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

* * * *

Section 102 of ERISA, 29 U.S.C. § 1022, provides in relevant part:

(a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the aver-

age plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

* * * *

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits, a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided, the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title).

Section 402 of ERISA, 29 U.S.C. § 1102 provides in relevant part:

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

* * * *

ERISA § 502, 29 U.S.C. § 1132, provides in relevant part:

> (a) Persons empowered to bring a civil action—
>
> A civil action may be brought—
>
> (1) by a participant or beneficiary—
>
> (A) for the relief provided for in subsection (c) of this section, or
>
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
>
> * * * *

STATEMENT OF THE CASE

Nature of the Case

Plaintiffs are salaried retirees of automotive parts supplier Kelsey-Hayes, who below sought on behalf of a putative class to enjoin Kelsey-Hayes to provide comprehensive health care coverage to them at no cost for their lifetimes. (R.1; Jt. App. 20). The suit was triggered by announced modifications (not termination) of their health benefits to include premium contributions; increased copayments and annual deductibles; changes in the manner coverage was coordinated with Medicare; and a lifetime benefit cap of $500,000 per beneficiary. Plaintiffs claimed injunctive relief under three theories. Count I sought to recover benefits due and to clarify rights to future benefits "under the terms of the plan," pursuant to Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). Count II alleged a breach of fiduciary duty under ERISA Section 404(a), 29 U.S.C. §§ 1104(a), 1132(a)(2), (a)(3).

Count III alleged promissory estoppel. (R.1; Jt. App. 11-22).

Plaintiffs filed their Complaint on January 5, 1994, and a Motion for Preliminary Injunction on February 8, 1994. (Pet. App.19a; R. 4; Jt. App. 23).

Historical Changes to Retiree Health Care

The January 1, 1994 health care changes which precipitated this suit were but the last of a series of changes made by Kelsey-Hayes to salaried retiree health care benefits. From 1985 forward the changes have been aimed at controlling spiraling health care costs. The January 1, 1994 changes additionally were the result of new accounting rules under FASB 106. (R.7; Jt. App. 174); *Employers' Accounting for Postretirement Benefits Other Than Pensions,* Statement of Financial Accounting Standards No. 106 (Fin. Accounting Standards Bd. 1990) ("FASB 106").

In 1985, Kelsey-Hayes newly required mandatory second opinions for specified surgical procedures, mandated pre-authorization for other services, imposed maximum allowable costs for generic drugs over proprietary drugs, and increased the co-payment for each prescription drug from $3 to $5. (R.7; Jt. App. 172, 178-84).

Effective January 1, 1992, Kelsey-Hayes newly required monthly contributions for health care benefits for salaried retirees under 65, ceased Medicare Part B reimbursement for salaried retirees age 65 or over, and increased the prescription drug co-payment for all salaried retirees. (R. 7; Jt. App. 173, 189-91).

Effective January 1, 1993, Kelsey-Hayes again increased the health care contribution required of salaried retirees under 65. (R.7; Jt. App. 173, 192).

The Plan Documents

The plan documents setting forth salaried employee and retiree health care benefits were the provider contracts: the master policy agreements, schedules, certificates and administrative service operating agreements ("ASO's") providing for such benefits. During the relevant time period, Kelsey-Hayes entered into successive provider contracts with Blue Cross-Blue Shield, Connecticut General Life Insurance Company, and John Hancock Mutual Life Insurance Company.

Nothing in these plan documents provided for vesting, lifetime duration, or continuation of benefits beyond the terms of the provider contracts. In contrast, each provider contract did contain a cancellation provision, allowing Kelsey-Hayes to terminate the health care benefits upon written notice. (R.7; Jt. App. 175-76, 261, 271, 282, 284-85; R.36; Jt. App. 548, 685-86, 696, 709-10).

The Summary Plan Descriptions

Plaintiffs obtained the preliminary injunction on the basis of two Summary Plan Descriptions ("SPD's"), issued pursuant to 29 U.S.C. § 1022. The 1977 SPD advised that "[t]he Kelsey-Hayes Insurance Plans are insured welfare benefit plans providing Health Care coverages." It noted that:

> The foregoing is intended only as an outline of your Kelsey-Hayes Health Care coverages. Actual govern-

> ing provisions are contained in the applicable benefit certificates and any riders thereto as well as detailed benefit schedules or similar documents provided by the carriers which are available to you upon request from the insurance office at your work location.

(R. 4: Jt. App. 42, 37).

The 1984 SPD was contained in a salaried employee handbook, the preamble of which stated:

> Each Benefit Plan has its own terms and conditions which in all respects control the benefits provided.

In its original form, the 1984 handbook was a three-ring binder, which stated:

> When future benefit changes are made, this handbook design allows for easy updating by simply replacing outdated pages with any new pages that will be provided to you.

Again, the 1984 SPD provided that insurance certificates containing the "group insurance benefit coverages you have" were available on request. (R.4; Jt. App. 45, 77).

The Purported SPD "vesting" language

The language in the 1977 SPD upon which Plaintiffs and the courts below relied as evidence of "vesting" of welfare benefits consisted of the following:

> *KELSEY HAYES PAYS THE FULL COST FOR . . .*
>
> . . . .
>
> When you are retired, your Health Care coverages, except for vision, are continued without cost to you.
>
> If you terminate employment with Kelsey-Hayes at age 65 or older for any reason other than discharge, all of your Health Care coverages, except vision care,

> will be continued for the rest of your life without cost to you.

(R.4; Jt. App. 29, 39).

> *CONTINUING INSURANCE AFTER AGE 65*
>
> All of your Health Care coverages are continued after age 65 whether you work for Kelsey-Hayes or not, except that vision coverage is provided only while you are actively at work. However, these benefits are reduced by benefits payable under Medicare if you are enrolled for Parts A and B of Medicare.

(R.4; Jt. App. 40). (Pet. App. 3-4a).

The 1984 SPD language that the Sixth Circuit found to contain "similar promises" consisted of:

> All Health Care coverages, except Major Medical, will be continued for you and your eligible dependents during your retirement years at the expense of the Company.

(R.4; Jt. App. 44, 76). (Pet. App. 4a).

The District Court Decision

On July 7, 1994, the district court issued a decision which granted a preliminary injunction only as to Count I—the ERISA § 502(a)(1)(B) claim for benefits under the terms of the welfare plan. (Pet. App. 36-39a). The district court denied Plaintiffs' claim for injunctive relief as to Counts II and III, holding that the latter failed for lack of proof that plaintiffs detrimentally relied on the SPD's. The order required Kelsey-Hayes to reinstate health care benefits in effect prior to January 1, 1992 for all applicable salaried retirees who retired before January 1, 1994, and their surviving spouses and dependents. (Pet. App.

45a). Excluded from the injunction were only those salaried retirees who had signed a special retirement agreement acknowledging Kelsey-Hayes' right to modify or terminate benefits.

The district court acknowledged that the plan documents (the provider contracts) expressly reserved Kelsey-Hayes' right to terminate the benefit plans, but held that the SPD language had the effect of "vesting" the benefits for life. The court ruled that when SPD language contradicts the plan document, the SPD prevails, citing the Sixth Circuit's decision in *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 136 (6th Cir. 1988) ("*Edwards*"). (Pet. App. 25-29a).

Alternatively, the district court found that the SPD language created an ambiguity. The court resolved the ambiguity in favor of Plaintiffs by: (1) invoking the *Yard-Man* "inference" that retiree benefits are intended to vest, citing *International Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984); and (2) considering proffered extrinsic evidence of Kelsey-Hayes policy. (Pet. App. 30-32a).

The Sixth Circuit Decision

Kelsey-Hayes filed a timely notice of appeal to the Sixth Circuit. Plaintiffs filed no cross-appeal. The Sixth Circuit affirmed the injunction, agreeing that the SPD language had the effect of vesting benefits. It held that under *Edwards* the SPD's governed, without any showing of detrimental reliance by plaintiffs, citing *Sprague v. General Motors Corp.*, 92 F.3d 1425 (6th Cir.), *reh'g en banc granted and vacated*, 1996 WL ___ (6th Cir. Nov. 7,

1996).[1] (Pet. App. 6-7a). The Court thus held that the SPD language was enforceable, despite: (1) plan language which permitted policy termination; (2) SPD provisions that the plan documents—the provider contracts—controlled in cases of conflict; and (3) no evidence that Plaintiffs detrimentally relied upon the SPD vesting language.

The Sixth Circuit did acknowledge this Court's holding that employers can modify or terminate welfare benefits "whether or not they have reserved the right to do so," in *Curtiss-Wright Corp. v. Schoonejongen*, 115 S. Ct. 1223, 1228 (1995). (Pet. App. 8a). But the Sixth Circuit nonetheless required the underlying plan document to explicitly reserve that statutory amendment right. Even assuming that the plan cancellation clauses sufficed as that reservation, the Court further found that ERISA § 102(b), 21 U.S.C. § 1022 (b), required that the SPD's

---

[1] General Motors' petition for rehearing *en banc* raised three issues. Two are irrelevant to the instant petition: (1) whether the Sixth Circuit properly affirmed class certification; and (2) whether informal oral and written statements to early retirees established vested welfare benefits. The third issue was whether "for life" language in SPD's waived the statutory right to amend the plan, where that right was explicitly reserved in the underlying insurance documents and other SPD's. (Pet. Reh. 1-3, filed 8/28/96).

This Court thus should grant the writ as to Questions 2 and 4 of this petition, because the Sixth Circuit will not rule on them in *Sprague*. This Court additionally should grant the writ as to Questions 1 and 3, for the Sixth Circuit has wrestled since 1988 with the effect to be given SPD's which conflict with the plan documents, without resolving it in a manner consistent with ERISA and this Court's decisions in *Curtiss-Wright* and *Firestone*.

additionally and expressly recite the amendment right. As the Court concluded, "unless the modification/termination provision was [also] explicitly contained *in the SPD*, the benefits are not subject to such a provision." (Emphasis added). (Pet. App. 14a).

On the district court's alternative ground, the Sixth Circuit found that extrinsic evidence was not appropriately considered. It ruled that the provider contracts did not actually conflict with the SPD's, so as to render the vesting language ambiguous, because the cancellation clauses "appear[ed]" related only to the company-carrier commercial relationship. (Pet. App. 15a).

REASONS FOR GRANTING THE WRIT

1. The writ must be granted because the Sixth Circuit's decision directly contravenes *Curtiss-Wright v. Schoonejongen*: ERISA grants plan sponsors a pre-existing statutory right, which need not be reserved in the plan, to amend, modify or terminate welfare plans. The Sixth Circuit's decision erroneously required the employer to explicitly reserve that amendment right in the "written instrument" establishing the welfare "plan." The Court doubly erred in requiring SPD disclosure documents to additionally recite that amendment right. The decision also contravenes the Court's holding in *Firestone Tire and Rubber v. Bruch* that the administrator is to apply the terms of the plan itself.

2. The writ must be granted because the Sixth Circuit's holding that ERISA § 102(b) requires SPD's to recite the statutory amendment right directly conflicts with decisions of the Fourth and Fifth Circuits. Review of this

Court is necessary to resolve the conflicting decisions on this important and recurring question.

3. Even if the Sixth Circuit correctly construed § 102(b), the writ must be granted. The Sixth Circuit decision joins those of other circuits, which directly conflict with decisions of the Third Circuit on the same issue—whether § 502(a)(1)(B) permits enforcement of an SPD which conflicts with the terms of the benefit plan. Review by this Court is necessary to resolve the conflicting decisions on this important and recurring question.

4. The writ finally must be granted because the Sixth Circuit decision creates a direct conflict with the decisions of six other circuits as to whether plaintiffs must prove detrimental reliance to recover benefits under an SPD which conflicts with the plan. Again, review by this Court is required to resolve the conflicting decisions on this important and recurring question.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRIOR PRONOUNCEMENTS

a. ERISA comprehensively regulates employee benefits and governs any claim of entitlement to benefits. The statute divides employee benefits into two classes: pension and welfare. ERISA § 3(1), (2), 29 U.S.C. § 1002(1), (2). As to pension benefits, ERISA prescribes detailed, mandatory vesting and funding requirements, to assure that the funding is available to pay the benefits when due. *Massachusetts v. Morash*, 490 U.S. 107, 119 (1989). No such vesting or funding requirements, however, exist for welfare plans. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90-91 (1983). As this Court just last term affirmed, "ERISA does not create any substantive entitlement to

employer-provided health benefits or any other kind of welfare benefits. Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." *Curtiss-Wright Corp. v. Schoonejongen*, 115 S. Ct. 1223, 1228 (1995).

Curtiss-Wright established the rule that the Sixth Circuit here should have applied: the presumed right to amend a welfare benefit plan is *statutory*, not a term of a particular plan. The sponsor's right to amend the plan therefore need *not* be explicitly reserved in the plan documents. *Gable v. Sweetheart Cup Co.*, 35 F.3d 851, 855 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 1442 (1995); *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 937 (5th Cir.), *cert. denied*, 105 U.S. 870 (1993); *Deibler v. UFCW Local 23*, 973 F.2d 206, 210 (3d Cir. 1992) (severance pay).

Kelsey-Hayes could have waived this statutory right, and agreed to vest its salaried retirees' health benefits. ERISA, however, contains its own statute of frauds, which requires that "every employee benefit plan shall be established and maintained pursuant to a written instrument." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The requirement is a "core functional requirement[ ]" of ERISA. *Curtiss-Wright*, 115 S. Ct. at 1230. It is the written "terms of the plan" which can be enforced under ERISA—nothing else. Thus, any waiver of the amendment right to vest welfare benefits must be stated in clear and express language in the written plan documents. *Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d at 855; *Wise v. El Paso Natural Gas Co.*, 986 F.2d at 937. Given the potentially ruinous financial consequences of vesting health insurance benefits that are neither paid in full at

retirement or pre-funded over the employee's work life, such a waiver can be created only by a clear and unequivocal written statement in the plan document.

Here, as the Sixth Circuit itself repeatedly has recognized, the "written instrument" which constituted the welfare plan was each of the provider contracts. *Sprague v. General Motors Corp.*, 92 F.3d at 1434; *Musto v. American Gen. Corp.*, 861 F.2d 897, 900-01 (6th Cir. 1988), *cert. denied*, 490 U.S. 1020 (1989). *Accord Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d at 856 (4th Cir.). As conceded by the Sixth Circuit below, these provider contracts contained no hint of vesting language. Nothing provided that health coverage would be provided for the retiree's lifetime, that health benefits "vested," that any coverage extended beyond the termination of the provider contracts, or that a retiree would become eligible for a particular set of benefits upon retirement. To the contrary, the language in such provider contracts affirmatively allowed Kelsey-Hayes to cancel upon notice, plain and simple.

Under *Curtiss-Wright*, even complete silence on the issue of vesting in the plan documents should have been the end of the inquiry. Here, of course, the plan was not silent, but rather expressly permitted policy cancellation on notice. As the Sixth Circuit itself had seemed to recognize before its recent cases reaffirming *Edwards*, the existence of a modification clause in the plan—the provider contracts—ends the inquiry: plaintiffs have no claim for vested welfare benefits. *Gill v. Moco Thermal Indus., Inc.*, 981 F.2d 858, 860 (6th Cir. 1992); *Musto v. American Gen. Corp.*, 861 F.2d at 905 (under ERISA, the plan—not the SPD—defines the employer's obligation). *Accord Gable v. Sweetheart Cup Co.*, 35 F.3d at 856. The Sixth Circuit here misconstrued ERISA, and contravened

Curtiss-Wright, in shifting the burden to the employer to explicitly reserve its amendment rights in the plan document.

The Sixth Circuit compounded its error under *Curtiss-Wright* by additionally requiring the SPD to recite the amendment right. Section 502(a)(1)(B) permits enforcement of "the terms of the plan." 29 U.S.C. § 1132 (a)(1)(B). The SPD is not the ERISA plan. *Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310, 1316 (3rd Cir.), *cert. denied*, 501 U.S. 1232 (1991). Rather, it is a simple, statutory-defined disclosure, required to contain only that information specified in ERISA § 102(b), 29 U.S.C. § 1022(a)(1), (b). Given that *Curtiss-Wright* requires no reservation of amendment within the plan itself, it surely requires no such reservation be included in the summary of the plan. The statutory scheme affirms the correctness of *Curtiss-Wright*: neither ERISA nor the Department of Labor's implementing regulations anywhere require an SPD to recite the statutory right to amend the plan. *Wise v. El Paso Natural Gas Co.*, 986 F.2d at 934; 29 C.F.R. § 2520.102-3.

b. The Sixth Circuit's decision requires the plan administrator to disobey the terms of the plan, and to rather enforce a contradictory SPD. The decision thus is inconsistent with the analysis of this Court in *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989). This Court there held that a denial of benefits challenged under ERISA § 502(a)(1)(B) must be reviewed under a *de novo* standard (absent the benefit plan's grant of discretion to the administrator to construe the plan). This Court explicitly rejected that the interpretation of plan terms was an inherently discretionary function. Rather, this Court held that the validity of a § 502(a)(1)(B) claim

rises and falls with the "terms in the plan at issue," which a court is to construe—as with contractual provisions—without regard to either party's interpretation. *Firestone*, 489 U.S. at 112, 115. *See also Curtiss-Wright*, 115 S. Ct. at 1231 (plan administrators are statutorily required to run the plan in accordance with the currently operative, governing plan documents).

II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE FOURTH AND FIFTH CIRCUITS

The Sixth Circuit held that § 102(b) required the SPD to disclose the amendment right, as "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." (Pet. App. 12a). This holding directly conflicts with decisions of the Fourth and Fifth Circuits.

In *Gable v. Sweetheart Cup Co., Inc.*, the Fourth Circuit upheld summary judgment for the employer on an ERISA claim by retirees to enforce benefits under a health care plan. The Court first found that the welfare plan consisted of only the insurance policies, which explicitly reserved the right to cancel the plan. The Court then rejected the argument that the SPD's failure to recite that reservation precluded amendment. Citing the Fifth Circuit's decision in *Wise v. El Paso Natural Gas*, the Fourth Circuit held that the SPD is not designed "to educate [participants] regarding all aspects of ERISA law applicable to employee benefit plans in general." *Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d at 858.

In *Wise v. El Paso Natural Gas*, the Fifth Circuit faced the same facts presented to the Sixth Circuit here: the

insurance policies which constituted the welfare plan allowed the employer to terminate the plan; the SPD's did not recite that right and contained purported vesting terms, but also referred participants back to the plan's official text. The Fifth Circuit rejected the argument that the SPD's failure to recite the amendment right precluded amendment. Examining § 102(b) in context of the statute, the Fifth Circuit found that "[s]ection [102(b)] relates to an individual employee's eligibility under then existing, current terms of the Plan and not to the possibility that those terms might later be changed, as ERISA undeniably permits." *Wise v. El Paso Natural Gas Co.*, 986 F.2d at 935.

The decisions of the Fourth and Fifth Circuits are supported by the Department of Labor's own regulations implementing § 102(b). See 29 C.F.R. § 2520.102-3(l), (j) (the SPD must include "a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture or suspension of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required"—for welfare plans—of eligibility requirements such as age and length of service). *Accord Jensen v. SIPCO, Inc.*, 38 F.3d 945, 952 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1428 (1995) (regulations support that SPD need not disclose amendment right).

III. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE THIRD CIRCUIT

The Sixth Circuit's ruling that § 502(a)(1)(B) can be used to enforce an SPD which conflicts with the underly-

ing welfare plan has broadened the conflict between the circuits on this issue. The Second, Fifth and Eleventh Circuits appear to follow the Sixth: SPD terms are binding when they conflict with the plan itself. *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 981-82 (5th Cir. 1991) (no effect given to SPD disclaimer that plan controls); *Heidgerd v. Olin Corp.*, 906 F.2d 903, 907-08 (2nd Cir. 1990); *McKnight v. Southern Life & Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985). *Accord Whiteman v. Graphic Communications Int'l Union Supp. Retirement and Disability Fund*, 871 F. Supp. 465, 466 (D.D.C. 1994). The Seventh Circuit repeatedly has agreed with that conclusion in *dictum*. *See Herrmann v. Cencom Cable Assoc., Inc.*, 978 F.2d 978, 983 (7th Cir. 1992); *Senkier v. Hartford Life & Accident Ins. Co.*, 948 F.2d 1050, 1051 (7th Cir. 1991); *Fuller v. CBT Corp.*, 905 F.2d 1055, 1060 (7th Cir. 1990).

Directly to the contrary are decisions of the Third Circuit. In *Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310 (3d Cir.), *cert. denied*, 501 U.S. 1232 (1991), plaintiff beneficiary sought § 502(a)(1)(B) recovery of increased life insurance benefits based on the death of an employee not actively at work. The group insurance policy and the insurance certificate both provided that an employee became eligible for the increased life insurance only if actively at work after the increase took effect. Plaintiff claimed recovery under a document she characterized as an SPD that did not mention the "actively at work" requirement. The Third Circuit squarely held that § 502(a)(1)(B) permits recovery only under the terms of the "welfare plan" as defined in § 3(3), 29 U.S.C. § 1002(3). That Court found that this definition did not include an SPD, and thus that § 502(a)(1)(B) cannot en-

force SPD-based benefits. *Gridley v. Cleveland Pneumatic Co.*, 924 at 1315, 1318.

In *Gillis v. Hoechst Celanese Corp.*, 4 F.3d 1137 (3rd Cir. 1993), *cert. denied*, 114 S. Ct. 1369 (1994), the Third Circuit followed *Gridley* in a case—like this one—in which the SPD provided that the plan documents controlled in event of conflict. The Court held that "the plan document (i.e., the separation pay policy document) controls and the plaintiffs 'cannot recover under 29 U.S.C. § 1132(a)(1)(B) [of ERISA] for benefits allegedly due under a summary plan description' " (quoting *Gridley*).

This issue is both important and recurring. In addition to the decisions discussed, the Fourth and Eighth Circuits have ruled that whether ERISA enforces a conflicting SPD depends upon whether the SPD favors the plaintiff participant. In *Glocker v. W.R. Grace & Co.*, 974 F.2d 540, 543 (4th Cir. 1992), the Fourth Circuit utilized this result—based analysis to rationalize its ruling that an SPD with a "plan controls" disclaimer did not govern (plan would favor plaintiff), with its ruling in *Pierce v. Security Trust Life Ins. Co.*, 979 F.2d 23, 27-28 (4th Cir. 1992), that an SPD with a "plan controls" disclaimer did govern (SPD would favor plaintiff). *Accord Sturges v. Hy-Vee Employee Benefit Plan and Trust*, 991 F.2d 479, 480-81 (8th Cir. 1993). *See also McGee v. Equicor-Equitable HCA Corp.*, 953 F.2d 1192, 1201 (10th Cir. 1992) (rejecting employer's argument that SPD governed, when contained "plan controls" disclaimer).

ERISA, however, does not require the establishment of any welfare plan, and defines the scope of entitlement to benefits by the terms of the plan at issue. This Court's intervention thus is urgently needed to provide the

appellate courts with a rule of decision rooted in the statute, rather than in sympathy for participants.

IV. THE DECISION BELOW CONFLICTS WITH DECISIONS OF SIX OTHER CIRCUITS

The Sixth Circuit here found that a plaintiff under § 502(a)(1)(B) can enforce benefits under an SPD which conflicts with the benefits plan, absent any showing that plaintiff detrimentally relied on those SPD provisions (evidence the district court had found non-existent). Its decision thus is directly contrary to those of the six circuit courts to decide the same issue.[2]

All six circuits have required, under varying formulations, that a plaintiff cannot enforce benefits under an SPD which conflicts with the benefits plan, absent proof of detrimental reliance—that the SPD information caused him to take action he otherwise would not have taken. *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1519 (10th Cir. 1996) (employees must rely on the SPD "or otherwise show prejudice" from its inconsistency with the master plan document); *Aiken v. Policy Management Sys. Corp.*, 13 F.3d 138, 141 (4th Cir. 1993) (must show significant reliance or possible prejudice from the SPD terms); *Branch v. G. Bernd Co.*, 955 F.2d 1574, 1579 (11th Cir. 1992) (must show reliance on terms of SPD); *Pierce v. Security Trust Life Ins. Co.*, 979 F.2d 23, 29-30

---

[2] The Second and Fifth Circuits have noted, but not decided, the issue. *See Hansen v. Continental Ins. Co.*, 940 F.2d at 983; *Heidgerd v. Olin Corp.*, 906 F.2d at 907. The Seventh Circuit has approved the detrimental reliance standard in *dictum*. *Andersen v. Chrysler Corp.*, 1996 U.S. App. LEXIS 28496 at *35, 39 n.11 (7th Cir. Nov. 1, 1996).

(4th Cir. 1992); *Gridley v. Cleveland Pneumatic Co*, 924 F.2d at 1319 (3rd Cir.); *Bachelder v. Communications Satellite Corp.*, 837 F.2d 519, 522-23 (1st Cir. 1988) (must show significant reliance); *Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512, 1520 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989); *Govoni v. Bricklayers, Masons & Plasterers Int'l Union Local No. 5 Pension Fund*, 732 F.2d 250, 252 (1st Cir. 1984) (must show "some significant reliance upon, or possible prejudice flowing from, the faulty plan description"). *See also Andersen v. Chrysler Corp.*, 1996 U.S. App. LEXIS 28496 at *35, 39 n.11 (suggesting detrimental reliance is required); *Heidgerd v. Olin Corp.*, 906 F.2d at 907 (same).

This issue is both recurring (as the citations reflect) and important. The Sixth Circuit's decision imposes strict liability on the employer, without support in the statute or the legislative history. ERISA nowhere provides that the SPD is an independent source of rights. Rather, by definition the SPD is both entirely derivative of the plan, and its issuance lags behind changes made to the plan. An SPD which provides notice of a "material modification" to plan terms, for example, need only be supplied within 210 days of the end of the plan year in which the change is adopted. 29 U.S.C. § 1024(b)(1), as amended 110 Stat. 1936 (1996) (60 days for a material reduction).

The only legislative history cited by the Sixth Circuit provides no support for such draconian strict liability. Congress did note that "[i]t is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in the plan booklets." (Pet. App. 7-8a, *citing* H.R. Rep. No. 93-533, 93rd Cong., 2d Sess, *reprinted* in

1974 U.S. Code Cong. & Admin. News 4639, 4646). All that Congress there stated, however, is that SPD's are intended to give notice to the employee of pre-conditions he may need to fulfill—pre-conditions which appear in and are imposed by the plan. The Sixth Circuit cited no history—and there is none—which would support the SPD as an independent source of substantive rights, which rights appear nowhere in the plan itself.

What the legislative history clearly does reflect is that Congress considered and struck the balance between employee and employer interests in favor of not requiring vesting of benefits plans, so as to grant employers the flexibility to deal with unstable variables such as inflation, medical costs, and technology. *Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d at 859. Enforcement of that statutory flexibility is particularly vital to employers now. They struggle not only with tremendous health care costs, but also with catastrophic cuts to their net worth and pre-tax earnings as a result of FASB 106, which required recognition of the present value of projected post-retirement benefits. The statutory flexibility of welfare benefits plans would be thwarted if plaintiffs could enforce non-plan benefits based upon an SPD that they never read, much less detrimentally relied upon. The Sixth Circuit's decision could not more strongly discourage the creation by employers of welfare benefits plans.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JULIA A. MARTIN
Counsel of Record
MATKOV, SALZMAN, MADOFF & GUNN
55 East Monroe Street, Suite 2900
Chicago, Illinois 60603
(312) 332-0777

Attorneys for Petitioner

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 94-1942

RICHARD P. HELWIG, et al.,
Plaintiffs-Appellees,

v.

KELSEY-HAYES COMPANY
Defendant-Appellant

On Appeal from the United States District Court
for the Eastern District of Michigan

Decided and Filed August 20, 1996

Before: MERRITT, Chief Judge; DAUGHTREY and OAKES, Circuit Judges.

MERRITT, Chief Judge. This is an appeal by the Defendant, Kelsey-Hayes Company, who seeks to overturn the granting of a preliminary injunction by the District Court. Plaintiffs, retired employees of Kelsey-Hayes, claim that the Company reduced their health care benefits in violation of the Employee Retirement Income Security Act of 1974 (ERISA). 29 U.S.C. §§ 1001-1461 (1988). The District Court found that the Plaintiffs have a substantial likelihood of success on the merits and therefore granted them a preliminary injunction which reinstates their retiree health care coverage, pending the

outcome of the case. Because this case is clearly controlled by *Edwards v. State Farm Mutual Automobile Insurance Co.*, 851 F.2d 124 (6th Cir. 1988), as more fully explained below, the decision of the district court is AFFIRMED.

I. BACKGROUND

Plaintiffs are a class of approximately 1,500 retired salaried employees of Kelsey-Hayes Company, a manufacturer of parts and components for the automobile industry. As retirees, they continue to receive some health care benefits through the Company. In 1985, and again in the early 1990s, Kelsey-Hayes instituted changes to the health care package that it provides to its retirees. Those changes are not the subject of this suit. In April 1993, the Company announced its intent to significantly increase retiree costs under the plan. Prior to January 1, 1994 retirees were not required to pay deductibles or co-payments for service. After that date, the modifications required co-payments for service, deductibles, monthly premiums and significantly increased drug co-payments. Four days after the effective date of these modifications, the Plaintiffs filed this suit to prevent the changes from taking effect.

Plaintiffs claim that they were promised certain lifetime health care benefits by their Employer, and that the employer never reserved the right to reduce or terminate their coverage. They rely on the official "Summary Plan Descriptions" (SPDs) of benefits packages which, under ERISA, the employer is required to distribute to employees. *See* 29 U.S.C. § 1022. The SPDs in effect between 1977 and 1990 promise certain lifetime retirement health

benefits at no cost to the employee. The Defendant relies on other provisions within those SPDs that state that the master insurance agreement between the company and the insurance carrier controls the terms of the employees' benefits. They then point to provisions in the master agreements which permit cancellation by either party (the Company or the carrier). The Defendant also points to booklets and brochures (not required under ERISA) which reserve the right to modify or terminate benefits.

In 1977, Kelsey-Hayes issued a summary of its benefits plans entitled "Your Health Care Benefits As a Salaried Employe [sic] of the Kelsey-Hayes Company." Joint Appendix at 29 [hereinafter "Jt. App."]. Page nine of that summary clearly states the health coverage benefits the employees will receive upon retirement:

> *KELSEY HAYES PAYS THE FULL COST FOR . . .*
>
> . . . .
>
> When you are retired, your Health Care coverages, except for vision, are continued without cost to you.
>
> If you terminate employment with Kelsey-Hayes at age 65 or older for any reason other than discharge, all of your Health Care coverages, except vision care, will be continued for the rest of your life without cost to you.

Id. The SPD also contains the provision:

> *CONTINUING INSURANCE AFTER AGE 65*
>
> All of your Health Care coverages are continued after age 65 whether you work for Kelsey-Hayes or not, except that vision coverage is provided only while you are actively at work. However, these benefits are reduced by benefits payable under Medicare if you are enrolled for Parts A and B of Medicare.

Id. at 40. The SPD contains no mention of a right to modify or terminate the benefits. The 1984 SPD introduced by Plaintiffs contained similar promises, also with no mention of modification or termination rights reserved by the Company. Jt. App. at 76.

Defendant introduced various benefits brochures and SPDs however, which included references to the agreements between the Company and the insurance carrier. For example, the cover of an early 1970's employee benefits brochure states:

> This revised Brochure is intended to present a brief description of the Benefit Plans and Programs provided for salaried employees. The insurance contract or other documents which govern the administration of the Plans are available in the Industrial Relations Department and provide the complete description of these Plans and Policies. You should refer to these documents for a full description. Should there be any variance between this description and the actual Plan document, the latter will apply.

Jt. App. at 170. In contrast, during the 1990s, the Defendant distributed SPDs relating to general health care benefits which contained clauses explicitly reserving the right to modify or terminate the benefits described. For example, a 1990 SPD states, "The Company reserves the right to modify, suspend or terminate the benefits described herein at any time." Jt. App. at 488.

Defendant also introduced the cancellation clauses from each of the contracts between Kelsey-Hayes (or its parent company of the time) and the various insurance carriers who provided coverage (*e.g.*, Aetna, Blue-Cross, CIGNA, John Hancock). Those cancellation clauses all state that the Company and/or the insurance carrier

have the right to cancel the policy, with the proper notice. For example, the CIGNA contract's termination clause read, "The Policyholder may cancel the policy as of any Premium Due Date by giving written notice to the Insurance company before that date." Jt. App. at 271.

The district court held that the Plaintiffs have a substantial likelihood of success on the merits because the benefits vested at retirement and they cannot now be modified or terminated. *Helwig v. Kelsey-Hayes Co.*, 857 F. Supp. 1168, 1175 (E.D. Mich. 1994). The district court reasoned that the 1977 and 1984 SPDs conflict with the insurance agreements, and that under this Circuit's decision in *Edwards*, the SPD is controlling. *Id.* (citing *Edwards*, 851 F.2d at 136). Alternatively, the district court held that the language of the SPDs and the insurance agreements creates an ambiguity, which, under this Court's decision in *UAW v. Yard-Man, Inc.*, must be resolved in favor of the Plaintiffs. *Id.* (citing *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984).

II. ANALYSIS

The issue before this Court is whether it was reasonable for the district court to find that the Plaintiffs have a reasonable likelihood of success because, 1) the benefits promised to the Plaintiffs vested at the time they retired, and 2) the benefits were not subject to any modification or termination provision. This Court reviews the granting of a preliminary injunction under an "abuse of discretion" standard. *Tate v. Frey*, 735 F.2d 986, 990 (6th Cir. 1984). In doing so, we review the merits of the case to the extent necessary to determine if the trial court exceeded reasonable discretion by granting the relief. *Id.*

A. *Edwards v. State Farm Mutual Automobile Insurance, Co.*

In *Edwards v. State Farm Mutual Automobile Insurance Co.*, we held that statements made in Summary Plan Descriptions are binding, and if they conflict with statements made in the Plan itself, the Summary Plan Description controls. 851 F.2d 134, 136 (6th Cir. 1987). Although *Edwards* involved disability benefits, rather than welfare benefits, this Court has previously applied the principles of *Edwards* in the welfare benefit context. *See Sprague v. General Motors Corp.*, 1996 Fed. App. 0265P, 16-17 (6th Cir.) The Defendant in *Edwards* attempted to deny an employee disability benefits. *Id.* at 135. Under its employee benefit plan, eligibility for disability benefits was calculated by adding the employee's age to the employee's "credited service" (i.e. the amount of time the employee had worked for the company up to the date of his or her disablement). *Id.* Only those employees whose age plus amount of credited service totaled fifty-five years or more were eligible for disability benefits. *Id.* The Summary Plan Description given to the employees by the Defendant stated that "time while on sick leave counts for plan membership and . . . as credited service. . . ." *Id.* Under the Summary Plan Description, therefore, Edwards had enough credited service to be eligible for disability benefits. *Id.* Under the definitions in the Plan document, in contrast, Edwards' time on sick leave was excluded from credited service, and therefore, he did not have enough credited service to be eligible for disability benefits. *Id.* We held that State Farm could not, in reliance on the Plan document, deny Edwards disability benefits because "statements in a summary plan are binding and if such statements conflict with those in the plan itself, the summary shall govern." *Id.* at 136.

Our decision in *Edwards* recognized the impact that a summary descriptions have on lay beneficiaries. *Id.* at 136. We noted that employees count on them to provide an accurate picture of their current benefits situation, as well as for information which will allow them to make intelligent decisions about their future benefits needs. *Id.* "Had Edwards been apprised of the Committee's interpretation of the Plan," we reasoned, "he could have made 'alternate financial plans,' to guard against the Plan's shortcoming." *Id.* (quoting *Hodgins v. Central States Southeast*, 624 F.2d 760, 761 (6th Cir. 1980)). As we explained in *Edwards*, State Farm should have realized that the explicit language and the promises made in their SPD would cause unsophisticated lay employees to rely on the representations. *Id.* We held, however, that "precedent does not dictate that a claimant who has been misled by summary descriptions must prove detrimental reliance." *Id.* at 137. Instead, we concluded that it is the employer's duty to put the employees on notice of their rights under the plan, and if they fail to adequately do so, they will be precluded from enforcing Plan language which conflicts with summary description language to the detriment of their employees. *Id.* at 136-37.

Our decision in *Edwards* was also based on the statutory language itself. *Id.* at 136. We quoted § 1022 of ERISA, which states that summary descriptions must be " 'written in a manner calculated to be understood by the average plan participant, and . . . sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.' " *Id.* at 136 (citing 29 U.S.C. § 1022(a)(1)). In addition, we cited the legislative history of ERISA, which explains that "[i]t is grossly un-

fair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in the plan booklets."). *Id.* (citing H.R. Rep. No. 93-533, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 4639, 4646). Reasoning that the summary plan provisions would be useless if the Plan documents were allowed to undermine them, and recognizing that "Congress has promulgated a clear directive prohibiting misleading summary descriptions," we declined to "undermine that legislative command" by imposing "technical requirements" on employees. *Id.* at 137 (" 'It is of no effect to publish and distribute a plan summary booklet designed to simplify and explain a voluminous and complex document and them proclaim that any inconsistencies will be governed by the plan. Unfairness will flow to the employee for reasonably relying on the summary booklet.' ") (citing *McNight v. Southern Life and Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985)).

B. Application of *Edwards*

1. Vesting of Benefits

The first issue to be addressed is whether or not the benefits in question are "vested" benefits. In other words, were the benefits complete and consummated upon the retirement of each Plaintiff such that they cannot now be divested without the consent of those to whom they belong? Until benefits have vested, employers may modify them or terminate them, whether or not they have reserved the right to do so. *Curtiss-Wright Corp. v. Schoonejongen*, 115 S. Ct. 1223, 1228 (1995).

Under ERISA, welfare benefits, unlike pension benefits, do not automatically vest. *Id.* In addition, this Court has a rejected a *per se* rule which held that all welfare benefits vest at retirement regardless of whether a termination clause was included in the agreement between the employer and employee. *In re White Farm Equip. Co.*, 788 F.2d 1186, 1193-94 (6th Cir. 1986). Employers and employees are therefore free to set out, by agreement, welfare benefit plans which vest irrevocably at retirement. *Id.* at 1192.

In order to determine if welfare benefits have vested, federal courts must assess the intention of the parties. *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir. 1991). In doing so, the court looks first to the "written instruments" which formed the agreement for clear manifestations of intent. *Policy v. Powell Pressed Steel Company*, 770 F.2d 609, 614 (6th Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986). The written instruments to be examined in this case are the SPDs and the master insurance agreements. The SPDs told employees that,

> When you are retired, your Health Care coverages, except for vision, are continued without cost to you. If you terminate employment with Kelsey-Hayes at age 65 or older for any reason other than discharge, all of your Health Care coverages, except vision care, will be continued for the rest of your life without cost to you.

Jt. App. at 39. This statement, and similar ones made in the 1984 SPD, demonstrate an intent to vest benefits in employees when they retire. *See Policy*, 770 F.2d at 614 (statement in collective bargaining agreement that provided health coverage " 'during the life of the pensioner at no cost to the pensioner' . . . clearly means that the

pensioner will receive health benefits for the remainder of his life, regardless of when the collective bargaining agreement expires. . . ."). Defendant relies on the cancellation clauses of the master agreements to support its assertion that it never intended for the benefits to vest. Giving effect to the master agreement cancellation provisions, they argue, would not violate the rule in *Edwards* that the SPDs control, because of the provisions in the SPDs themselves which designate the master agreements as controlling.

This attempt to bootstrap the cancellation clauses into the SPDs through the SPD provisions designating the master agreements as controlling fails for two reasons. First, the plain language of the master agreements indicates that the cancellation clauses were included merely to reserve the right of the employer or the carrier to end their commercial relationship. Therefore, as the District Court concluded, it is doubtful that the cancellation clauses are even relevant to the scope of employee benefits. Thus, even if the master agreement cancellation clauses were controlling (which, under *Edwards*, they are not), an objective look at the plain language of the documents leads to the conclusion that the Defendants intended for the rights to vest. Second, even if we assume that the cancellation clauses were intended to regulate the obligations of the employer to the employees, this Court had held quite clearly that promises made in SPDs are binding on the employer regardless of conflicting language in a master agreement. *Edwards*, 851 F.2d at 136. In *Edwards*, there was no dispute about the intent of the definitions in the Plan document, upon which the defendant sought to rely. This Court assumed that under the Plan documents, Edwards could legitimately be de-

nied disability benefits. What mattered in *Edwards*, and what matters today, is the language actually given to the employees and upon which they could reasonably have relied. In both *Edwards* and the case at hand, the SPDs were the only documents which were written by the employer and were distributed to the employees. Just as the plaintiff in *Edwards* reasonably relied on the promises made by State Farm regarding his eligibility for disability benefits, it was reasonable for the Plaintiff employees in this case to believe that if they retired while the 1977 or 1984 SPDs were in effect, they would be entitled to the specified health benefits promised at no cost to them. By retiring from Kelsey-Hayes, they indicated their intent to accept those benefits as they were then defined. In this circuit, under *Edwards*, Companies are held to the promises they make in their SPDs. 851 F.2d at 136.

As in *Edwards*, we may also turn to the legislative history of ERISA for guidance. The purpose of the ERISA legislation was to "remedy certain defects in the private retirement system" which threatened individual pension and benefits rights. H.R. Rep. 533, 93rd Cong., 2d Sess. (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4639. One of the concerns addressed in the legislation was the inadequacy of the limited data available to employees under pre-ERISA law. *Id.* at 4649. Congress sought to create disclosure requirements which would enable the individual participant to "know [ ] exactly where he stands with respect to the plan—what benefits he may be entitled to, [and] what circumstances may preclude him from obtaining benefits . . ." *Id.* at 4649. Congress chose to implement its goal of full disclosure by requiring that all employers create and distribute "Summary Plan Descriptions" ("SPDs") of all benefit plans. 29 U.S.C.

§ 1022. The statute, cited in *Edwards*, provides that the Summary Plan Descriptions, "shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a)(1). In addition, the statute requires that the Summary Plan Descriptions include information explaining "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. § 1022(b). According to the legislative history, these statutory requirements were imposed to arm employees with enough information to enable them to enforce their rights. H.R. Rep. No. 533, *reprinted in* 1974 U.S.C.C.A.N. at 4649. Following the same reasoning we used in *Edwards*, we conclude that it would make no sense for Congress to require employers to provide clear, simple, complete descriptions of benefits plans if the employee were expected to also know and understand every clause in the voluminous, complex, and legalistic document the SPD was intended to accurately describe. *Edwards*, 851 F.2d at 136-37.

The SPDs in this case, like all SPDs, were produced under a statutory obligation of comprehensiveness and accuracy. Kelsey-Hayes made promises of certain lifetime health benefits to retirees. Even if this court were to find that the cancellation clauses in the master agreements were originally intended to reserve the Company's right to modify or terminate employee benefits, the plain language of the contracts, the statutory language and legislative history of ERISA dictate that employers may not construct SPDs in such a manner that they mislead employees into thinking they have a right to benefits when

other documents obliquely negate those rights. *See* H.R. Rep. No. 533, *supra*, at 4639, 4636, 4349; *Edwards*, 851 F.2d at 136. When making decisions about where and how long to work, employees, like the plaintiffs in this case, rely on the promises made to them, particularly when those promises are in writing. This Court has previously refused to accept employer interpretations of benefits documents where the employee was not given any note of the adverse interpretation and had no reason to know of it. *Edwards*, 851 F.2d at 136; *Rhoton v. Central States, Southeast and Southwest Areas Pension Fund*, 717 F.2d 988, 992 (6th Cir. 1983). For these reasons, we hold that the district court was reasonable in concluding that the documents indicate an intent by Kelsey-Hayes to create retirement health care benefits which would vest in the employees when they retired. Kelsey-Hayes may not now shirk the responsibilities it created by retroactively reinterpreting complex legal documents in a manner adverse to its retirees. *See id.*

2. Right to Modify or Terminate Vested Benefits

Once it is determined that the benefits promised by the Company vested in the Plaintiffs at retirement, it becomes necessary to decide what terms and conditions were properly placed on the benefits prior to the time they vested. We have held that employers may modify or terminate vested rights where their power do so was an explicit part of the agreement between the parties. *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1001 (6th Cir. 1993); *Musto v. American General Corp.*, 861 F.2d 897, 904-06 (6th Cir. 1988), *cert. denied*, 490 U.S. 1020 (1984); *In re White Farm Equip. Co.*, 788 F.2d 1186,

1189, 1192-94 (6th Cir. 1986). However, this question is also controlled by *Edwards*, which held that the language of SPDs is binding, and where there is a conflict between the language of the SPD and the other official plan documents, it is the SPD which is controlling. *Edwards*, 851 F.2d at 136. Thus, unless the modification/termination provision was explicitly contained in the SPD, the benefits are not subject to such a provision.

Defendants assert that our holding in *Edwards* has been limited by two subsequent cases: *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1001 (6th Cir. 1993), and *Gill v. Moco Thermal Industries, Inc.*, 981 F.2d 858, 860 (6th Cir. 1992). In *Boyer*, the defendant explicitly reserved the right to modify or terminate benefits in the summary description. That case, therefore, does not apply to the situation at hand. 981 F.2d at 1001 ("[P]lan booklet provided: 'It is hoped that this Plan will be continued indefinitely, but, as is customary in group plans, the right of change or discontinuation at any time must be reserved.' "). In *Gill*, there were no SPDs at issue. Therefore, we held that an unambiguous cancellation clause in an insurance agreement between an employer and an insurance carrier was an effective reservation of the right of the employer to modify employee health benefits. 981 F.2d at 860. In that case, plaintiffs appear to have relied on the verbal assurances made to them by their employer in support of their equitable estoppel claim. *Id.* While reliance upon boiler plate cancellation clauses from insurance contracts to determine employee rights is troubling under any circumstances, it is understandable that this Court would chose to do so where the agreement is the only available written source of guidance. That is not the case here.

We note that in finding for the Plaintiffs, the district court relied, alternatively, on this Court's opinion in *UAW v. Yard-Man*, 716 F.2d 1476, 1480-82 (6th Cir. 1983). Under *Yard-Man*, when the language in a Plan document is ambiguous, the Court may use extrinsic evidence of in order to clarify the terms of the agreement. 716 F.2d at 1480-82. Thus, if an ambiguity in the SPD had been created in this case by the promises made, the reference to the master agreement, and the cancellation clause in that agreement, the court could use extrinsic evidence to determine the terms of the benefits at the time the Plaintiffs retired. *Id.* In this case, however, the language of the master agreements neither conflicts with nor creates an ambiguity in the SPD. The language of the cancellation clauses appears simply to contemplate a cessation of the commercial relationship between the Company and the insurance carrier. These clauses were, in fact, used by the Company on numerous occasions when it chose to change the insurance company with which it did business. There is no evidence that the clauses were originally intended to have some "dual" purpose of reserving the right of the Company to terminate employee benefits. Thus, *Yard-Man* is not applicable to the case at hand.

The analysis of the Defendant's purported modification/termination provisions is therefore similar to the analysis of the intent to vest benefits; the court looks to the plain language of the documents, the ERISA statute, and legislative intent. *Edwards*, 851 F.2d at 136-37; *Boyer*, 986 F.2d at 1005; *Musto*, 861 F.2d at 909-10; *White Farm*, 788 F.2d at 1191-93. As to the reservation of the right to modify or terminate benefits, the legislative history also weighs against allowing employers to

promulgate SPDs which they can disavow even though they did not reserve such a right up front. Congressional intent cannot be carried out unless employers are required to adhere to the language of their own Summary Plan Descriptions. In *Edwards*, this Court refused to allow a Company to issue Summary Plan Descriptions which make all sorts of promises and then bury escape clauses in highly technical and inaccessible insurance agreements. Similarly, we cannot, in this case, permit the goals of the ERISA SPD provisions to be thus undermined. Other circuits have come to similar conclusions. *See, e.g., Aiken v. Policy Management Sys. Corp.*, 13 F.3d 138, 141 (4th Cir. 1993); *Heidgerd v. Olin Corp.*, 906 F.2d 903, 907 (2nd Cir. 1990); *McKnight v. Southern Life and Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985).

III. CONCLUSION

In this case, the SPDs promulgated by the Defendant made clear, unambiguous promises of lifetime coverage and they contained no valid provisions reserving the right to modify or terminate the benefits conferred. Those benefits vested at the time each Plaintiff retired. Because we do not find that the SPD is ambiguous, the need for extrinsic evidence to resolve such an ambiguity is not present; therefore, we do not reach the Defendant's claim that an evidentiary hearing on the extrinsic evidence was improperly denied. For these reasons, we hold that the plaintiffs have demonstrated a reasonable likelihood of success on the merits, and therefore, the district court was reasonable in granting them a preliminary injunction. The decision of the district court is hereby AFFIRMED.

APPENDIX B

[Dated July 6, 1994]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 94-70036

Honorable Paul V. Gadola
U.S. District Judge

RICHARD P. HELWIG, RICHARD L. BAYLESS, AUGUST L. BOETSCH, DONALD L. BARBER, JOSEPH F. SORNA AND LOUIS H. KAYSER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

v.

KELSEY-HAYES COMPANY,

RESPONDENT.

MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

This matter is before the court on plaintiffs' motion for a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure. Plaintiffs represent a proposed class of individuals seeking relief under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461, from defendant Kelsey-Hayes Company. Plaintiffs are seeking reinstatement

of retiree benefits that they allege they are due under the terms of a welfare benefit plan. The court held a hearing on plaintiffs' motion on June 8, 1994. For the reasons discussed below, the court will grant plaintiffs' motion.

I. Background

Plaintiffs are retired salaried employees of defendant or their surviving spouses and dependents.[1] Plaintiffs represent a proposed class that numbers approximately 5,300 individuals. Defendant Kelsey-Hayes is a supplier and manufacturer of automotive parts that conducts business in several states. Plaintiffs claim that defendant breached its promise to provide them with lifetime retiree health coverage under the terms of previous benefit packages.

Over approximately the past two years defendant has instituted a number of changes to the health package that it provides to its salaried retirees. Plaintiffs now seek an injunction ordering defendant to reverse these changes. On January 1, 1992, defendant began requiring monthly contributions for health benefits for all retirees under the age of sixty-five. It also ceased medicare reimbursement for all salaried retirees, and it increased the prescription drug co-payment. On January 1, 1993, defendant again increased contributions that it required from retirees under sixty-five. The most significant

---

[1] In another case before this court, *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410 (E.D. Mich. 1994), unionized retirees of a Kelsey-Hayes have filed a class action alleging breach of a collective bargaining agreement and a welfare benefit plan resulting from reductions in their medical insurance coverage.

changes to plaintiffs' health benefits occurred on January 1, 1994. Defendant instituted a twenty percent co-payment with an annual maximum of $2,000 per person and $4,000 per family. Retirees are now required to pay annual deductibles of $300 per person and $600 per family. Previously, plaintiffs were not required to pay either deductibles or co-payments. In addition, defendant required new monthly premiums of $2 per individual or $4 for family coverage, established a lifetime maximum of $500,000 in coverage, and again increased the prescription drug co-payment. Plaintiffs received notice of these changes in April of 1993.

Plaintiffs filed this action on January 5, 1994, four days after the effective date of defendant's latest changes to its salaried retiree health coverage. Plaintiffs are seeking an injunction ordering defendant to restore the benefits package that they were receiving prior to January 1, 1992. They claim that defendant made these changes to their health coverage in violation of an ERISA benefit plan as expressed in various booklets and summary plan descriptions that were distributed to employees. In addition, plaintiffs contend that the changes to their benefits plan constitute a breach of fiduciary duty under ERISA that requires defendant to enforce the plan according to its allegedly vested provisions. Finally plaintiffs contend that the principle of equitable estoppel should apply to the enforcement of an ERISA plan based upon oral guarantees made to them by defendant's agents concerning the nature of retiree medical benefits that were promised to them.

Defendant contends that the master insurance agreements that established medical coverage for plaintiffs allow for termination with thirty days notice. Further-

more, defendant relies on a more recent summary plan distributed to retirees that reserves a right to terminate or alter the benefits plan to the company. In addition, defendant argues that neither a claim for equitable estoppel nor breach of fiduciary duties is stated in the context of a reduction in health insurance provided under an ERISA benefits plan.

II. Standard of Review for Preliminary Injunctions

Plaintiffs are seeking a preliminary injunction that requires defendant to reinstate the health benefits that it provided to retirees prior to implementing the modifications of the past two years. The decision of whether or not to issue a preliminary injunction lies within the discretion of the district court. *CSX Transp., Inc. v. Tennessee State Bd. of Equalization*, 964 F.2d 548, 552 (6th Cir. 1992). When determining whether to issue a preliminary injunction, a district court should address four factors:

1. the plaintiff's likelihood of success on the merits of the action;
2. the irreparable harm to plaintiff that could result if the court does not issue the injunction;
3. whether the interests of the public will be served; and
4. the possibility that the injunction would cause substantial harm to others.

Forry, Inc. v. Neundorfer, Inc., 837 F.2d 259, 262 (6th Cir. 1988); *In re DeLorean Motor Co.*, 755 F.2d 1223 (6th Cir. 1985); *Mason County Medical Ass'n v. Knebel*, 563 F.2d 256 (6th Cir. 1977).

III. Likelihood of Success on the Merits

In order for plaintiffs to be successful in their motion for a preliminary injunction, they must establish a substantial likelihood of success on the merits of their underlying claims. Plaintiffs are seeking relief under: 29 U.S.C. § 1132(a)(1)(B) of ERISA for enforcement of a welfare benefit plan, 29 U.S.C. § 1103(a) of ERISA for breach of a fiduciary duty, and promissory estoppel. The court will now examine plaintiffs' likelihood of success under each of these claims of relief.

A. Enforcement of a Welfare Benefit Plan

ERISA makes a clear distinction between employee pension plans and employee welfare plans. *Gill v. Moco Thermal Indus., Inc.*, 981 F.2d 858, 860 (6th Cir. 1992); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1297 (6th Cir. 1991). Pension plans provide for vested benefits, while "[h]ealth insurance plans are employee welfare plans, for which there is no vesting requirement under ERISA." *Gill*, 981 F.2d at 860; *Musto v. American Gen. Corp.*, 861 F.2d 897, 912 (6th Cir. 1988), *cert. denied*, 490 U.S. 1020 (1989). As in any other contract, however, the parties to a welfare benefits plan are free to agree to the vesting of health insurance coverage for retirees under an ERISA plan. In addressing a claim for vested retiree health benefits, the court "must look to the intent of the parties and apply federal common law of contracts to determine whether welfare benefits have vested." *Gill*, 981 F.2d at 860. In making this determination, the court must first look to the language contained in the "plan documents" in order to decide if plaintiffs' benefits are vested. *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1005 (6th Cir. 1993); *see Musto*, 861 F.2d at 900-01

(court should look to "written instrument;" court also looked to other document); *In re White Farm Equipment Co.*, 788 F.2d 1186, 1193 (6th Cir. 1986) (court examined summary booklets distributed to employees). "However, if the plan documents are ambiguous with respect to a particular term, then, under federal common law, a court may use traditional methods of contract interpretation to resolve the ambiguity, including drawing inferences and presumptions and introducing extrinsic evidence." *Boyer*, 986 F.2d at 1005.

In this case, the parties both rely on various insurance agreements, summary plan descriptions and employee booklets in support of their contrary claims. Plaintiffs also rely on extrinsic evidence in the form of verbal assurances given to employees over the past twenty years. Before examining the particular documents, however, the court will discuss the various arrangements defendant had with several insurance companies to provide health coverage to salaried employees and retirees. Up until January 1, 1988, defendant contracted with Blue Cross and Blue Shield of Michigan ("Blue Cross") to provide health insurance. Beginning in 1988, defendant replaced Blue Cross with the Connecticut General Life Insurance Company ("CIGNA"). CIGNA was then replaced with the John Hancock Mutual Life Insurance Company ("John Hancock") in 1992. John Hancock is defendant's current health insurance provider.

In support of their claim for vested retiree health benefits, plaintiffs rely upon summary plan description booklets distributed to them, benefits summary certificates, and verbal assurances made by defendant's agents over the past twenty year period. On the other hand, defendant relies upon the provisions of the master insurance

agreements, the language of certain summary description booklets, and certain agreements signed by over one hundred salaried employees allegedly releasing any claim to vested benefits. The court will examine in detail each of the documents presented to the court by the parties in determining the "intent" of the ERISA benefits plan for retirees.

Plaintiffs rely most heavily upon two employee booklets that were issued by defendant. At least as early as 1977, plaintiffs allege that defendant distributed a booklet entitled "Your Health Care Benefits as a Salaried Employe [sic] of the Kelsey-Hayes Company" to employees in its Detroit, Romulus, Jackson, and R & D facilities. Plaintiffs represent that this booklet is typical of the booklets distributed at Kelsey-Hayes facilities in other states. The booklet describes the health insurance plan for salaried employees, and it appears to be a summary plan description issued as required by 29 U.S.C. §§ 1021(a), 1022(a)(1), and 1024(b) of ERISA.

In its introduction, the booklet states that the "Kelsey-Hayes Company provides protection for you and your eligible dependents against a wide range of health care expenses while you are an active employee and after your retirement." Plaintiffs' exhibit A, at 1. In a section entitled "KELSEY-HAYES PAYS THE FULL COST FOR," the booklet states as follows:

> When you are retired, your Health Care coverages, except for vision, are continued without costs to you.
>
> If you terminate employment with Kelsey-Hayes at age 65 or older for any reason other than discharge, all of your Health Care coverage, except vision care, will be continued for the rest of your life without cost to you.

> Kelsey-Hayes also pays the full cost of Health care coverages, except vision care, for surviving spouses and eligible children of deceased pensioners.

Id. at 9. The booklet makes no claims about the ability of defendant to modify or terminate any of the benefits detailed therein. Defendant points out, however, that on page seven of the booklet, it states that the

> foregoing is intended only as an outline of your Kelsey-Hayes Health Care Coverages. Actual governing provisions are contained in the applicable benefit certificates and any riders thereto as well as detailed benefit schedules or similar documents provided by the carriers which are available upon request from the insurance office at your work location.

Id. at 7. Defendant claims that this provision informs the employee that he cannot rely upon the representations in the summary description, but instead needs to look at the insurance certificate itself. Plaintiffs contend, however, that this provision could easily be misread as only applying to the first seven pages of the booklet given the use of the word "foregoing," and not the provision on page nine which promises continued health benefits through retirement.

Plaintiffs also rely upon statements made in another booklet issued by defendant entitled "Employee Benefit Handbook for Salaried Employees Kelsey-Hayes Company." Plaintiffs' exhibit B. This booklet was apparently issued in early 1984 to employees at the Detroit, Jackson, R & D, and Romulus facilities. It also appears to be a summary plan description that was issued in compliance with ERISA. The booklet states that the "Kelsey-Hayes Company provides protection for you and your eligible dependents against a wide range of Health Care

expenses while you are an active employee and after your retirement." *Id.* at I-1. In a section entitled "CONTINUATION OF INSURANCE COVERAGE UPON RETIREMENT," the booklet states that "[a]ll Health Care coverages, except Major Medical, *will be continued for you and your dependents during your retirement years at the expense of the Company.*" *Id.* at V-3 (emphasis added). It also provides that "KELSEY-HAYES PAYS THE FULL COST OF all Health Care coverages and group insurance benefits." *Id.* at V-1. Plaintiffs contend that similar promises were made in summary booklets distributed at other Kelsey-Hayes facilities, except that the specific benefits provided were different depending on the coverage provided to employees at the particular facility. Again, plaintiffs point out that nowhere in the booklet does defendant reserve to itself the right to modify or terminate any of the benefits described in the booklet. The booklet does indicate again, however, that it merely "present[s] general information and is designed to give you an understanding of the many benefits available to you," but that "[e]ach Benefit Plan has its own terms and conditions which in all respects control the benefits provided."

Defendant relies upon the master insurance agreements and a recent summary plan description in support of its claim that plaintiffs do not have vested health coverage[2] In defendant's agreements with Blue Cross that

---

[2] Defendant also argues that plaintiffs' action is barred by the statute of limitations because changes were made to the retiree benefits plan in 1984, 1985, and 1986. Defendant claims that because plaintiffs filed their claim approximately eight years after these changes were made, it is outside of the six

(continued...)

covered the health benefits plan through 1987, it states as follows:

> A. TERM: this contract is an agreement for the period indicated on the payment notice sent to the subscriber, the employer, or remitting agent and will be renewed by payment of the subscription rate unless written notice of termination is given to [Blue Cross], or by [Blue Cross] to the subscriber, the employer, or remitting agent, not less than thirty (30) days prior to the date on which termination is to be effective.

Defendant's exhibit 3N. The master insurance agreements for CIGNA and John Hancock also provided for termination of the agreement upon written notice by either Kelsey-Hayes or the particular insurance company. Defendant claims that these provisions of the agreement give it the right to terminate or modify the health benefits it provides to its salaried retirees.

---

[2] (...continued)
year statute of limitations period for contract actions that would likely apply. However, in the instant action, plaintiffs do not seek to reverse the changes made in the mid-eighties, rather, they seek to reverse changes to the benefits plan enacted since January 1, 1992. The changes made in the mid-eighties are not significant enough to bar plaintiffs' claim in this matter. The changes in 1984 and 1985 relate to the creation of cost-containment and pre-certification procedures. They did not impose any real costs upon retirees. The change that occurred in 1986, increasing the drug co-payment to $5.00 from $3.50, does not compare with the many, more significant changes that have occurred over the last two years. As a result, plaintiffs' failure to file suit to reverse the minor change of 1986, doesn't bar them from challenging the more recent and far more significant changes instituted over the past two years.

In two recent Sixth Circuit opinions, the court found that similar provisions in the master agreements between employers and insurance companies gave the employer the right to terminate or modify the health benefits that it provided to its retirees.[3] *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1005 (6th Cir. 1993); *Gill v. Moco Thermal Indus. Inc.*, 981 F.2d 858, 860 (6th Cir. 1992). In each case, retirees brought an action under ERISA seeking vested health benefits under a welfare benefit plan.

Although this court is bound by these decisions, the instant case is distinguishable because of the representations made by defendant in summary plan descriptions concerning the duration of retiree health coverage. In *Gill*, the only plan document examined was the insurance policy that provided for termination upon thirty days written notice. *Id.* at 860. It appears that the *Gill* plaintiffs merely relied upon verbal assurances that were made to them by their employer. In *Boyer*, the court examined summary booklets provided to employees that

---

[3] Although it is bound by these decisions, the court notes that their reliance upon insurance termination provisions is problematic at best. These master insurance contracts represent the agreements between the suppliers of health coverage and the employer. They do not represent the agreements between employer and employee concerning the duration of retiree health benefits. These termination provisions represent an "out" for the insurer and the employer that allows each to choose another commercial partner. In the instant case, defendant appears to have utilized these provisions in the past not in relation to retiree benefits, but instead to terminate Blue Cross and CIGNA so that they could be replaced by a possibly more favorable insurer. *See also Boyer*, 986 F.2d at 1005-06 (similar criticism voiced in Judge Jones' concurring opinion).

seems to indicate that health benefits would be continued through retirement. *Boyer*, 986 F.2d at 1001. However, these booklets also contained unambiguous provisions reserving to the employer the right to change or discontinue the plan at anytime. *Id.*

In the instant case, plaintiffs have presented summary plan descriptions from 1977 and 1984 that indicate that retiree benefits were vested. The summaries indicate that health coverage "will be continued for you and your dependents during your retirement years at the expense of the Company" and for those employees who leave the company without a pension after age sixty-five, their benefits "will be continued for the rest of [their lives] without cost." In addition, the booklets distributed by defendant contain no reservation of rights to terminate or modify the plan at will as did the summaries in *Boyer*. As a result, there is a direct contradiction between the plan insurance agreements and the plan summaries given to employees.

In order to resolve the apparent contradiction, the court looks to guidance from two decisions of the Sixth Circuit concerning the weight that should be given to ERISA summary plan descriptions. In *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 136 (6th Cir. 1988), the court held that "statements in a summary plan are binding and if the statements conflict with those in the plan itself, the summary shall govern." *See also Rhoton v. Central States, S.E. & S.W. Areas Pension Fund*, 717 F.2d 988, 989-91 (6th Cir. 1983). *But cf. Musto v. American Gen. Corp.*, 861 F.2d 897, 907 (6th Cir. 1988) (court declines to address effect of written representations outside of the primary plan document), *cert. denied*, 490 U.S. 1020 (1989). The basis for this holding is that

ERISA's requirement of summary plan descriptions was intended to provide employees with a document explaining their benefits in terms comprehensible to the average participant. As the Sixth Circuit has noted, "[g]iven the [summary plan description's] important role under the ERISA framework, it is natural for courts to hold the [summary plan description] controlling when it conflicts with the plan itself." *Flacche v. Sun Life Assur. Co.*, 958 F.2d 730, 736 (6th Cir. 1992) (court held that terms of an SPD would be controlling, but that terms of a benefits certificate were non-binding). Without this result, unscrupulous employers could issue summary plans containing misleading information, but then avoid liability by referencing the technical master insurance agreement. Furthermore, by giving binding effect to plan summaries, employers have an added incentive to give accurate information to their employees. Several other circuits have come to similar conclusions. *See, e.g., Aiken v. Policy Management Sys. Corp.*, 13 F.3d 138 (4th Cir. 1993); *Heidgerd v. Olin Corp.*, 906 F.2d 903, 907 (2d Cir. 1990); *McKnight v. Southern Life and Health Ins. Co.*, 758 F.2d 1566, 1570 (11th Cir. 1985); *Govoni v. Bricklayers, Masons & Plasterers Int'l Union*, 732 F.2d 250, 252 (1st Cir. 1984). Thus, even though the language of the master insurance agreements gives defendant the right to terminate benefits, this court will give controlling weight to the representations made to plaintiffs in the summary plan descriptions.[4]

---

[4] The court will not give controlling weight to the provisions in the summary plans, cited by defendant, that reference the master insurance agreements and give them priority. As the court in *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 982 (5th

(continued...)

Even if the representations in the summary booklets were not conclusively binding, the contradictory statements in the plan documents create an ambiguity in the contract. In such cases, the court must look to other evidence in order to determine the intent of the parties to the agreement. *Boyer*, 986 F.2d at 1005. In *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), the Sixth Circuit held that where a collective bargaining agreement is ambiguous on the issue of the duration of retiree benefits, courts should apply an inference that retiree benefits were intended to vest for life. *Id.* at 1482; *see also Smith v. ABS Indus., Inc.*, 890 F.2d 841 (6th Cir. 1989); *Policy v. Powell Pressed Steel Co.*, 770 F.2d 609 (6th Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985); *UAW v. Cadillac Malleable Iron Co.*, 728 F.2d 807 (6th Cir. 1984). Because of the nature of retiree benefits as deferred compensation, they "are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained." *Yard-Man*, 716 F.2d at 1482. The Sixth Circuit has since held that this inference also applies outside of the context of collective bargaining agreements where salaried employees are involved. *In re White Farm Equipment Co.*, 788 F.2d 1186,

---

[4] (...continued)
Cir. 1991) stated, "to give effect to such a disclaimer would wholly undermine the rule that the statements of the summary plan description are binding."

1193 (6th Cir. 1986).[5] Thus, the guidance in *Yard-Man* would indicate that the ambiguity in this case should be resolved in favor of plaintiffs.

In order to resolve the ambiguity, plaintiffs have also presented extrinsic evidence in the form of affidavits from members of the proposed class who claim to have been given assurances that they would receive unmodified, lifetime benefits from defendant. *See Smith v. ABS Indus. Inc.*, 890 F.2d 841, 846-47 n.1 (6th Cir. 1989) (court considers representations made to employees). *But cf. Musto*, 861 F.2d at 909-10 (court indicates reluctance to rely on extrinsic oral statements in interpreting ERISA plan). Plaintiffs have also presented affidavits from policy makers, including the vice-president for human resources, that state that it was the policy of Kelsey-Hayes to provide lifetime health benefits to retirees. This evidence, along with the representations made in the summary booklets and the *Yard-Man* inference, convinces the court that plaintiffs have demonstrated a substantial likelihood of success for the claims of those salaried employees who retired during the period of time when the 1977 and the 1984 summary plan

---

[5] During oral argument, defense counsel repeatedly claimed that the Sixth Circuit in *Boyer* declared that the *Yard-Man* inference does not apply in the context of salaried retiree cases. In actual fact, however, the contrary is true. The court in *Boyer* stated that where "the plan documents are ambiguous with respect to a particular term, then under federal common law, a court may use traditional methods of contract interpretation to resolve the ambiguity, including *drawing inferences and presumptions* and introducing extrinsic evidence." *Boyer*, 986 F.2d at 1005 (citing *White Farm*, 788 F.2d at 1193) (emphasis added).

descriptions controlled the terms of retiree health benefits.[6]

In opposing plaintiffs' motion, defendant has presented additional insurance booklets and summary plan descriptions that it claims indicate that in 1990, retiree health coverage was no longer vested, but was instead subject to modification or outright termination. In May 1990, defendant distributed to its retirees a document entitled "Your Group Insurance Plan." In this plan description, defendant stated that the "Company reserves the right to modify, suspend or terminate the benefits described herein at any time." Defendant's exhibit 3L, at 4. It also states that retiree insurance would cease on "the date the policy was cancelled." *Id.* at 74.

In several cases, the Sixth Circuit has firmly established that explicit provisions that reserve the right to terminate or alter benefits to the employer defeat ERISA claims for vested retiree benefits. *See Musto*, 861 F.2d at 906-07 (company's right to change plan not in conflict with apparent promise of vested retiree benefits); *In re White Farm Equipment*, 788 F.2d at 1192-93 (where power to terminate welfare plan has been reserved, it may be exercised); *see also Boyer*, 986 F.2d at 1004-05 (6th Cir. 1993) (employer reserved right to change or discontinue plan at any time in summary plan); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1291, 1295, 1297 (6th Cir. 1991) (court stressed importance of provision reserving employer's right to terminate). The summary plan description provided to retirees in 1990 contains reser-

---

[6] The same would be true for the claims of those surviving spouses and dependents of employees who died during the period governed by the summary booklets.

vation of rights provisions similar or identical to those addressed by the Sixth Circuit in these cases.

The court finds, however, that the 1990 summary plan does not change or affect the welfare benefit plan provided to defendant's salaried retirees. The summary plan was only distributed to *retirees*, not employees. Thus, the representations and the reservation of rights contained therein would not even apply to current employees. Furthermore, the reservation of rights clause does not apply to those individuals who were already retired when they received the 1990 summary plan because their benefits would have already vested upon their retirement from the company. After retirement, it was, and is, too late for defendant to change the terms of the welfare benefit plan that it provides its retirees.[7] As a result, the 1990 sum-

---

[7] Defendant attempts to rely upon *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929 (5th Cir. 1993) in support of its claim that it retained the right to terminate or alter the benefits it provides to retirees. However, in *Wise*, the employer merely announced that any current employee who retired after a specified date would no longer be eligible for certain benefits during that individual's retirement. *See infra* note 8. The Fifth Circuit merely found that the employer retained that right under ERISA. *Id.* at 934-36.

Similarly, it is clear that defendant has always retained the right to alter the retiree health benefits that it offers to current employees when they retire. The issue in this case is whether defendant, in its past dealings with its employees before their particular retirement date, retained the right to alter or terminate benefits after that retirement date.

In *Wise*, the employer had issued several SPDs that did not contain reservation of rights provisions. *Id.* at 932-33. Once this oversight had been discovered, the employer issued an SPD that reserved its right to terminate benefits. It then

(continued...)

mary plan does not affect the rights of employees who retired in 1990 and thereafter because their benefit plan was still governed by the 1977 or 1984 summary plan descriptions issued to them as employees during their period of employment.[8]

---

[7] (...continued)

announced that it would eliminate retiree benefits offered to current employees who retired after a certain date. There was never a dispute over whether the employer could change the benefits it offered to those who had already retired. The company agreed that the benefits for those employees who had retired before the new SPD was issued had already vested based upon the language of prior SPDs. Further, the court noted that although ERISA allows employers to modify or discontinue welfare benefit plans, an employer's welfare plan may designate a vested benefit. *Id.* at 937 (citing *In re White Farm Equipment Co.*, 788 F.2d 1186, 1193 (6th Cir. 1986).

In the same way, defendant in this case made certain promises to its employees in summary plans without reserving its right to terminate those benefits after retirement. Because those employees retired before a new summary plan was issued that reserved termination rights to defendant, their right to those benefits has vested as promised by the plan. The discussion in *Wise* concerning proper vesting language is also inapplicable because that discussion concerned alleged promises made to "yet-unretired workers" and not to those who had already taken their retirement under the provisions of the prior SPDs. *Id.* 938.

[8] The court notes that its first inclination concerning the 1990 summary plan was to bifurcate its injunction for salaried retirees between those employees who retired before June 1, 1990 and those who retired after that date. However, the parties have advised the court that the 1990 summary plan was never distributed to employees, only retirees. As a result, those employees retiring after the issuance of the 1990 summary plan would still look to the 1984 summary for their benefits.

(continued...)

Defendant also relies upon an informational booklet entitled "Building the New Fruehauf Corporation: Your Retirement Plan" to support its claim that it had expressly reserved its right to terminate or alter the plan as early as 1986. However, it appears that this booklet is not a summary plan description and there is no clear evidence of when it was ever distributed to employees.[9] *See Flacche v. Sun Life Assur. Co.*, 958 F.2d 730, 736 (6th Cir. 1992) (reliance on non-summary plan document not binding on employer). Without a bright-line rule limiting consideration of documentary materials to summary plans and other official plan documents, the objectives of

---

[8] (...continued)

Another summary plan description, entitled "Retiree Health Care Plan" and effective January 1, 1994, was apparently distributed by defendant sometime in 1993 to both retirees and employees in order to coincide with the changes made to the plan on January 1, 1994. Defendant's exhibit 3J. It contains an express reservation of rights to modify or terminate the plan. As a result, under the reasoning set forth in this memorandum opinion, any of defendant's employees who have retired on or after January 1, 1994 would not have any vested health benefits as retirees and would not benefit from the court's preliminary injunction.

[9] Defendant has submitted the affidavit of Sandra Williams, which contains several additional documents concerning benefits for employees and retirees. The court finds, however, that these documents do not indicate that defendant had reserved to itself the right to terminate or alter retiree benefits, or that retiree benefits are not vested. The SPDs submitted by defendant do not apply to the benefits at issue in this matter, nor are they addressed to employees with reference to their future retiree health benefits. *See* Williams Affidavit, exhibits A, B, C, E, and G. In addition, two of the documents appear to be mere informational booklets and not summary plan descriptions, and thus they do not have any controlling weight in the determination of benefits.

ERISA would be frustrated and the court would be inundated with irrelevant and improper information.

Finally, defendant has alleged that over one hundred salaried employees signed special retirement packages in which they agreed that Kelsey-Hayes reserved to itself the right to terminate or change the retirement plan at any time. The court finds that any member of the proposed class that signed such an agreement is not entitled to unmodified health coverage under the court's injunction to be issued in this case. The court's order in this matter shall not apply to any individual who signed an acknowledgment of defendant's right to terminate the retirement plan.

In summary, the court finds that plaintiffs have demonstrated a substantial likelihood of success on the merits of their claim for vested retiree health benefits.

B. Breach of Fiduciary Duties

In addition to seeking recovery of retiree health benefits under 29 U.S.C. § 1132(a)(1)(B) of ERISA, plaintiffs also allege, in Count II of their complaint, that defendant has breached its fiduciary duties under ERISA to pay them benefits allegedly guaranteed by the employee benefit plan. 29 U.S.C. §§ 1104(a)(1)(D), 1132(a)(3). The court finds, however, that plaintiffs have not demonstrated a substantial likelihood of success for their breach of fiduciary duty claim. It is clear that "when an employer decides to establish, amend, or terminate a benefits plan, as opposed to managing any assets of the plan and administering the plan in accordance with its terms, its actions are not to be judged by fiduciary standards." *Musto*, 861 F.2d at 912. The Sixth Circuit

has held that a company "does not act in a fiduciary capacity when deciding to amend or terminate a welfare benefits plan." *Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 947 (6th Cir.), *cert. denied*, 498 U.S. 984 (1990); *see also Moore v. Reynolds Metals Co. Retirement Program*, 740 F.2d 454, 456 (6th Cir. 1984); *cert. denied*, 469 U.S. 1109 (1985); *Cunha v. Ward Foods, Inc.*, 804 F.2d 1418, 1432-33 (9th Cir. 1986) (decision to terminate pension plan not related to fiduciary duty); *Chait v. Bernstein*, 645 F. Supp. 1092 (D.N.J. 1986) (decision to terminate pension plan not governed by ERISA fiduciary duty), *aff'd*, 835 F.2d 1017 (3d Cir. 1987); *Amato v. Western Union Int'l, Inc.*, 596 F. Supp. 963, 968 (S.D.N.Y. 1984) (fiduciary standards only apply when defendant functions as plan administrator), *modified*, 773 F.2d 1402, 1416-17 (2d Cir. 1985), *cert. dismissed*, 474 U.S. 1113 (1986).

In the instant action, plaintiffs claim that defendant breached its fiduciary duty when it altered the health benefits that it provides its retirees. Because defendant's fiduciary duty is not implicated by plaintiffs' claim for vested retiree benefits, plaintiffs have failed to demonstrate a substantial likelihood of success on the merits of their claim.

C. Equitable Estoppel

In Count III of their complaint, plaintiffs are seeking reinstatement of benefits based upon principles of promissory estoppel. Defendant claims that any state law based estoppel claim is preempted and that the circumstances of this case make estoppel under ERISA inapplicable.

The court finds that plaintiffs have failed to demonstrate a substantial likelihood of success on the merits of their claim under estoppel. Any state law claim of promissory estoppel is preempted by 29 U.S.C. § 1144(a) of ERISA. *See Cromwell v. Equicor-Equitable HCA Corp.*, 944 F.2d 1272, 1276 (6th Cir. 1991), *cert. dismissed*, 120 L. Ed. 2d 931 (1992); *Davis v. Kentucky Finance Cos. Retirement Plan*, 887 F.2d 689, 696 (6th Cir. 1989), *cert. denied*, 495 U.S. 905 (1990); *see also Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45 (1987). In addition, plaintiffs have not established a proper claim for equitable estoppel under ERISA.

The Sixth Circuit has recognized that principles of equitable estoppel may be applicable in the context of the alteration or termination of retiree health benefits provided pursuant to an employee welfare plan. *See Gill v. Moco Thermal Indus., Inc.*, 981 F.2d 858, 860 (6th Cir. 1991) (no factual basis for application of estoppel in this instance); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1300 (6th Cir. 1991) (estoppel principles applicable to welfare benefit plans, but not pension plans). In *Armistead*, the court found that equitable estoppel applied where thirty-nine employees chose to retire early in reliance upon company representations that they would receive lifetime health benefits when a factory was closed. *Id.* at 1290, 1292, & 1298-99.

The elements of equitable estoppel are as follows: (1) representation of material fact; (2) awareness of true facts by party to be estopped; (3) an intention by the party to be estopped that the representation be acted upon; (4) unawareness of the true facts by the party asserting the estoppel; and (5) detrimental and justifi-

able reliance by party seeking estoppel. *Id.* at 1298 (citing *Apponi v. Sunshine Biscuits, Inc.*, 809 F.2d 1210, 1217 (6th Cir. 1987), *cert. denied*, 484 U.S. 820 (1987)). Plaintiffs allege that for many years company representatives told salaried employees that their health benefits would continue unmodified throughout their retirement. In reliance upon these representations, plaintiffs claim that they acted to their detriment.

The court finds that plaintiffs have failed to demonstrate a substantial likelihood of success on the merits of their estoppel claim. Plaintiffs have failed to show that they took any detrimental action as a result of defendant's representations. *See also Gordon v. Barnes Pumps, Inc.*, 999 F.2d 133, 137-38 (6th Cir. 1993) (estoppel claim fails for lack of detrimental reliance). The facts presented in *Armistead* present a clear case of specific detrimental reliance taken directly as a result of the representations made by company agents, while plaintiffs in the instant action have presented merely a general reliance over many years upon Kelsey-Hayes' representations concerning retiree benefits.

IV. Irreparable Harm to Plaintiffs

If a preliminary injunction is not entered, plaintiffs allege that they will suffer irreparable harm because they will be forced to choose between paying for needed medical procedures and paying for basic necessities. Plaintiffs are retirees or surviving spouses of retirees who allegedly do not have the financial resources necessary to afford the new medical costs that will result from implementation of the changes to the plan. Plaintiffs contend that they may be forced to forego needed medical

care because they would have to absorb part of the cost of the care under defendant's modified benefits plan. In support of their allegations, plaintiffs have submitted affidavits from individual retirees detailing the impact of the modifications of the benefits plan to their finances.

Defendant claims that plaintiffs have not established irreparable injury because they have not presented affidavits from any of the named plaintiffs. In addition, defendant denies that irreparable harm is likely given the fact that plaintiffs are salaried retirees who are less likely to be forced to forego necessities in order to pay for medical care because of more generous pensions or greater savings made during their employment. Defendant also discounts affidavits presented by putative members of the class action because plaintiffs have not yet sought class certification under Rule 23 of the Federal Rules of Civil Procedure.

The court finds, however, that plaintiffs have established that they would suffer irreparable injury absent injunctive relief. Numerous courts have found that reductions in retiree health insurance coverage constitute irreparable harm, meriting a preliminary injunction. *See, e.g., United Steelworkers of America v. Textron, Inc.*, 836 F.2d 6 (1st Cir. 1987) (retirees as a group have less resources and are more vulnerable to emotional distress due to the imposition of additional insurance costs); *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410 (E.D. Mich. 1994); *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261 (W.D. Mich. 1990) (because retirees live on fixed incomes, small increases in expenses create extreme financial hardship; they are more likely to suffer uncertainty and worry over the new costs associated with the modified plan), *aff'd*,

951 F.2d 1290 (6th Cir. 1991); *Mamula v. Satralloy, Inc.*, 578 F. Supp. 563 (S.D. Ohio 1983).

The court finds that plaintiffs have demonstrated that similar harm would befall salaried retirees and their surviving spouses and dependents were the modifications to plaintiffs' health benefits allowed to continue. Merely because some of the plaintiffs were high-level executives with Kelsey-Hayes who would not necessarily face hardship as a result of reductions in health insurance does not change the fact that the proposed class of plaintiffs in this case contains a large number of individuals who would face irreparable harm. Many of the proposed class members are retired secretarial or clerical workers who may face even worse hardships, given their lack of union protection, than those faced by unionized retirees in *Textron* and *Schalk*. In addition, the court will take into consideration the irreparable harm faced by putative class members before class certification because of the nature of injunctive relief at this stage of the litigation. *Lapeer County Medical Care Facility v. Michigan*, 765 F. Supp. 1291, 1301 (W.D. Mich. 1991) (prior to certification, court treated case as class action); *Musto v. American General Corp.*, 615 F. Supp. 1483, 1492 (W.D. Tenn. 1985) (preliminary injunction may issue prior to certification), *rev'd on other grounds*, 861 F.2d 897 (6th Cir. 1988), *cert. denied*, 490 U.S. 1020 (1989). Given the circumstances presented in this case, the court finds that plaintiffs have established that they will suffer irreparable harm if this court does not order defendant to reinstate their health insurance benefits.

V. Harm to Others

If a preliminary injunction is entered ordering defendant to reinstate the health benefits that it had previously provided to its retirees, defendant will be forced to pay the full benefits that it had provided prior to January 1, 1992. Thus, if a preliminary injunction is entered, defendant will suffer a financial loss during the pendency of this litigation that it may recoup if it is ultimately successful on the merits. Defendant claims that it will cost an additional $150,000 per month, over the cost of the modified plan, to maintain full benefits for plaintiffs. However, defendant has made no showing that requiring it to reinstate the old retiree benefit plan would cause it severe financial hardship. In fact, defendant has paid the full cost of health benefits for its retirees for many years prior to the recent changes.

The court finds that the harm to defendant of reinstating its former retiree health benefits would not outweigh the harm suffered by plaintiffs. Several other courts have found similarly that the harm caused an employer that is required to maintain health benefits because of a preliminary injunction is outweighed by the harm caused to retirees forced to go without medical care or forced to choose between basic necessities in order to pay premiums and deductibles. *Schalk*, 751 F. Supp. at 1268; *Shultz v. Teledyne, Inc.*, 657 F. Supp. 289, 293 (W.D. Pa. 1987). Defendant has demonstrated no special circumstances in this case that would indicate that the cost of maintaining full benefits for a number of its retirees would force it into bankruptcy or similar economic distress. The court finds that the harm caused defendant by an injunction requiring it to reinstate all health benefits previously provided to salaried retirees until this litiga-

tion is resolved does not outweigh the harm caused to plaintiffs.

VI. Interests of the Public

Plaintiffs allege that the public interest favors a preliminary injunction. Plaintiffs claim that ERISA strongly favors the protection of the rights of employees guaranteed by welfare benefits plans. ERISA provides that the policy behind it is to "protect the interests of participants in employee benefit plans . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, . . . by providing for appropriate remedies, sanctions, and ready access to the Federal Court." 29 U.S.C. § 1001(b). In *Schalk*, the court indicated that the "public interest lies in protecting the legitimate expectations of retirees that their health insurance will be provided for the rest of their lives." *Schalk*, 751 F. Supp. at 1268.

Defendant claims that the public interest lies in allowing companies to distribute the burden of greater health care costs to the beneficiaries of the coverage. Without such burden shifting, companies that create jobs and enrich communities would be hurt.

In the circumstances of this case, however, the court finds that the public interest favors issuance of a preliminary injunction reinstating full health benefits to those plaintiffs that have demonstrated a substantial likelihood of success on the merits of their claims.

VII. Security Bond

Pursuant to Rule 65(c), no "preliminary injunction shall issue except upon the giving of security by the ap-

plicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered" by defendant. Fed. R. Civ. P. 65(c). A district court must expressly consider the question of requiring a bond before issuing a preliminary injunction. *Roth v. Bank of the Commonwealth*, 583 F.2d 527 (6th Cir. 1978). The amount of security required and whether a bond is needed is up to the discretion of the district court. At oral argument, the court instructed the parties to submit briefs on the issue of the amount of bond, if any, that should be required in this case.

Defendant estimates that if it is required to reinstate its full health benefits for plaintiffs, it will cost the company approximately $150,000 a month. As a result, defendant has requested a bond of $250,000. In *Schalk*, based on defendant's claim that it would cost an additional $90,000 per month to maintain its old health plan, the district court required plaintiffs to post a $50,000 bond to support a preliminary injunction containing similar modifications of a retiree health plan. *Schalk*, 751 F. Supp. at 1269. In *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410 (E.D. Mich. 1994), a similar action brought by unionized retirees of defendant, the court required a bond of $100,000 based on defendant's representation that the injunction would cost the company approximately $160,000 per month. Plaintiffs contend that no bond should be required in this matter, or that they should only have to post a nominal amount.

Under the circumstances of this case, the court finds that a bond of $250,000 would be excessive. However, given the burden placed on defendant and following this court's similar ruling in *Golden*, the court will require plaintiffs to post a bond of $95,000 before it will issue a

preliminary injunction. A decision requiring no bond or only a nominal bond would be inappropriate in such a matter as this where defendant has strongly denied liability, there exist multiple and conflicting documents and affidavits, and where the state of the law in this circuit is arguably cloudy.

VIII. Conclusion

The court will grant plaintiffs' motion for a preliminary injunction ordering defendant to reinstate the health benefits to retirees and surviving spouses as provided before January 1, 1992. Plaintiffs have demonstrated that they will likely prevail on the merits and that they will suffer irreparable harm absent an injunction. In addition, the harm suffered by defendant as a result of an injunction would be outweighed by the harm suffered by plaintiffs without such relief.

ORDER

THEREFORE, IT IS HEREBY ORDERED that plaintiffs' motion for a preliminary injunction is **GRANTED**.

IT IS FURTHER ORDERED that upon the posting of a $95,000 security bond by plaintiffs, defendant Kelsey-Hayes shall reinstate the health care benefit plans that were in effect prior to January 1, 1992 for all applicable salaried retirees who retired before January 1, 1994 and their surviving spouses and dependents. The court's injunction shall not apply to any salaried retirees who signed special retirement agreements as set forth in the court's memorandum opinion.

SO ORDERED.

Dated: 7/6/94

/s/ Paul V. Gadola
PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

APPENDIX C

[Dated July 6, 1994]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 94-70036

Honorable Paul V. Gadola
U.S. District Judge

RICHARD P. HELWIG, RICHARD L. BAYLESS, AUGUST L. BOETSCH, DONALD L. BARBER, JOSEPH F. SORNA AND LOUIS H. KAYSER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

v.

KELSEY-HAYES COMPANY,

RESPONDENT.

ORDER AFFIRMING MAGISTRATE JUDGE CARLSON'S JUNE 2, 1994, ORDER REGARDING PLAINTIFFS' DISCOVERY MOTION AND DEFENDANT'S EMERGENCY MOTIONS

The court, pursuant to Rule 72(a) of the Federal Rules of Civil Procedure, 28 U.S.C. § 636(b)(1)(A), and LR 72.1(d)(1) (E.D. Mich. Jan. 1, 1992), having reviewed the magistrate judge's June 2, 1994 order and having reviewed defendant Kelsey-Hayes Company's June 20, 1994 appeal filed thereto and plaintiffs' July 1, 1994

response in opposition to defendant's appeal, finds the magistrate judge's order is not clearly erroneous or contrary to law.

The court notes that it has examined the affidavits that defendant seeks to have admitted concerning plaintiffs' motion for a preliminary injunction and finds that the information contained therein would not change the court's decision in this matter. Of course, defendant is free to resubmit the material for consideration by the court at a later point in the litigation.

ACCORDINGLY,

IT IS HEREBY ORDERED that the magistrate judge's June 2, 1994 order is **AFFIRMED**. Defendant's motions to adjourn the preliminary injunction hearing, to strike affidavits, and to compel completion of a limited purpose deposition are **DENIED**. The parties' motions concerning the production of documents and answers to interrogatories are **GRANTED** as delineated in the magistrate judge' June 2, 1994 order. Defendant's motion for production of all affidavits prior to hearing is **GRANTED** and neither side shall file any further material concerning the pending motion for preliminary injunction.

SO ORDERED.

Dated: 7/6/94

/s/ Paul V. Gadola
PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE